IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WP(C).No. 22267 of 2007(A)

PETITIONER:

SHAJAN ABRAHAM,
PROPRIETOR, THAYILLYAM PAINTS, ULLOOR,
THIRUVANANTHAPURAM.

BY ADV. SRI.ANIL NARAYANAN
SMT.A.K.PREETHA

RESPONDENTS:

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1. EMPLOYEES PROVIDENT FUND ORGANIZATION,
REGIONAL OFFICE, BHAVISHYA NIDHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM-695 004, REPRESENTED
BY THE REGIONAL PROVIDENT FUND COMMISSIONER.

2. THE ASSISTANT PROVIDENT FUND
COMMISSIONER, EMPLOYEES' PROVIDENT FUND
ORGANIZATION, REGIONAL OFFICE, BHAVISHYA NIDHI
BHAVAN, PATTOM, THIRUVANANTHAPURAM-695 004.

3. THE EMPLOYEES PROVIDENT FUND
APPELLATE TRIBUNAL, NEW DELHI.

BY STANDING COUNSEL SMT.T.N.GIRIJA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

WP(C) NO. 22267 OF 2007 - A

Dated this the 19th day of July, 2007

J U D G M E N T

The petitioner voluntarily sought coverage of the petitioner's establishment under the Employees Provident Funds and Miscellaneous Provisions Act (for short 'the Act') in 2005, under Section 1(4) of the Act although there was no notification bringing the petitioner's establishment under the provisions of the Act. The second respondent initiated proceedings under Section 7A of the Act for coverage of the petitioner's establishment, with effect from the anterior date. In that proceedings, Ext.P3 order has been passed ex parte since the petitioner did not appear on the date of posting. The petitioner filed Ext.P4 application for review under sub-section (1) of Section 7B of the Act before the Assistant Provident Fund Commissioner as well as Ext.P6 appeal before the E.P.F. Appellate Tribunal. The petitioner now complains that although the impugned order was passed only on 8.6.2007, even before the period prescribed by the

Act and Rules for filing an appeal expired, the second respondent has initiated proceedings for recovery of the disputed amount as per Ext.P5. The petitioner challenges these proceedings.

2. I have heard the learned Standing Counsel appearing for the Provident Fund Organisation also. This Court has repeatedly frowned upon the practice of initiating coercive proceedings for recovery in tax matters even before the expiry of the period prescribed for filing an appeal. As such, I am of opinion that it was not proper on the part of the second respondent to initiate proceedings for recovery as per Ext.P5.

3. In the above circumstances, the writ petition is disposed of as follows:-

The petitioner shall move the Tribunal for interim orders in Ext.P6 within a period of one month from today. If the petitioner moves the Tribunal for interim orders, further coercive proceedings for

recovery pursuant to Ext.P3 order shall be kept in abeyance till the Tribunal passes interim orders.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007